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Howard P. Magaliff

*Attorneys for Howard P. Magaliff,
Chapter 7 Trustee*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re:	:
	:
TNT TRANSPORT AND LOGISTICS, INC.,	:
	:
Debtor.	:
-----X	
HOWARD P. MAGALIFF, as Trustee of	:
TNT Transport and Logistics, Inc.,	:
	:
Plaintiff,	:
	:
– against –	:
	:
ROSHAN KURIAKOSE,	:
	:
Defendant.	:
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Chapter 7
Case No. 20-22221 (RDD)

Adv. Pro. No. 22-_____

COMPLAINT TO AVOID AND RECOVER FRAUDULENT TRANSFERS

Howard P. Magaliff, the chapter 7 trustee of the estate of TNT Transport and Logistics, Inc. (the “Debtor”), as plaintiff (“Plaintiff” or the “Trustee”), as and for his complaint against Roshan Kuriakose (“Kuriakose” or the “Defendant”), alleges the following upon knowledge as to his own acts and otherwise upon information and belief:

INTRODUCTION

1. Plaintiff brings this action pursuant to Rule 7001(1) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and sections 544(b)(1), 548(a)(1)(B) and 550(a)

of title 11, United States Code (the “Bankruptcy Code”) to avoid and recover constructive fraudulent transfers made by the Debtor to Defendant within four years prior to the Filing Date.

THE PARTIES

1. The Debtor filed a voluntary petition for relief under chapter 7 of the United States Bankruptcy Code on February 11, 2020 (the “Filing Date”).

2. The Trustee was appointed as the chapter 7 interim trustee of the Debtor’s estate and succeeded as the trustee pursuant to section 702(d) of the Bankruptcy Code following the first meeting of creditors.

3. The Defendant resides in West Haverstraw, New York.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.

5. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). If any of the claims asserted in this adversary proceeding are determined to be non-core, Plaintiff consents to the entry of final judgment by the Bankruptcy Court.

GENERAL ALLEGATIONS

7. Prior to the Filing Date, the Debtor was a transportation broker. The Debtor arranged for and procured trucking companies for customers that needed to ship goods.

8. The Debtor is owned by Tomy Thomas (“Thomas”).

9. The Defendant is Thomas’ nephew.

10. Between June 11, 2018 and December 23, 2019, the Debtor transferred not less than \$113,870 to the Defendant (the “Transfers”). A schedule of the Transfers is attached as Exhibit 1.

11. The Defendant was not an employee of the Debtor.

12. The Defendant did not receive an IRS Form W-2 or IRS Form 1099 from the Debtor.

13. The Defendant did not have a contract with the Debtor.

14. The Defendant did not provide any services for the Debtor.

FIRST CAUSE OF ACTION
(Avoidance of Transfers as Constructive Fraudulent Transfers
Pursuant to 11 U.S.C. § 548(a)(1)(B))

15. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

16. Pursuant to 11 U.S.C. § 548(a)(1)(B), a trustee may avoid any transfer of an interest of the debtor in property made on or within two years before the filing date of the debtor's petition if the debtor received less than a reasonably equivalent value in exchange for the transfer, and (i) was insolvent on the date of the transfer or became insolvent as a result of the transfer, (ii) was engaged in business or was about to engage in business for which any property remaining with the debtor was an unreasonably small capital, or (iii) intended to incur or believed it would incur debts beyond the debtor's ability to pay as they matured.

17. The Debtor was insolvent when the Transfers were made and continued to remain insolvent through the Filing Date.

18. At all times relevant to the allegations in this complaint, the Debtor had negative net worth. Attached as Exhibit 2 are balance sheets prepared from the Debtor's tax returns that show the Debtor's insolvency as of December 31, 2017, 2018 and 2019.

19. At all times relevant to the allegations in this complaint, the Debtor had unreasonably small capital with which to engage in business after making the Transfers and was cash flow negative.

20. Pursuant to 11 U.S.C. § 548(a)(1)(B), the Trustee is entitled to judgment avoiding the Transfers for the benefit of the creditors of the Debtor's estate.

21. Pursuant to 11 U.S.C. § 550(a), the Trustee is entitled to judgment directing payment from Defendant in the amount of the Transfers.

SECOND CAUSE OF ACTION
(Avoidance of Transfers as Constructive Fraudulent Transfers
Pursuant to 11 U.S.C. § 544(b)(1) and DCL § 273)

22. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

23. Pursuant to 11 U.S.C. § 544(b)(1), a trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of the Bankruptcy Code.

24. As reflected in the Debtor's Schedule F filed in this case [doc. 1, pp. 17-21], the Debtor has at least one unsecured creditor with a fixed, liquidated and non-contingent claim that is allowable under section 502 of the Bankruptcy Code.

25. Pursuant to section 273 of the New York Debtor and Creditor Law ("DCL")¹, every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

26. The Transfers were made to Defendant without fair consideration in return within the meaning of DCL § 272.

¹ Article 10 of the DCL was repealed and replaced by the New York Uniform Voidable Transaction Act effective April 4, 2020. Since the Transfers all occurred prior to April 4, 2020, former Article 10 governs.

27. Pursuant to 11 U.S.C. § 544(b)(1), the Trustee is entitled to judgment avoiding the Transfers for the benefit of the creditors of the Debtor's estate.

28. Pursuant to 11 U.S.C. § 550(a), the Trustee is entitled to judgment directing payment from Defendant in the amount of the Transfers.

THIRD CAUSE OF ACTION
(Avoidance of Payments as Constructive Fraudulent Transfers
Pursuant to 11 U.S.C. § 544(b)(1) and DCL § 274)

29. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

30. Section 274 of the DCL provides: "Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent."

31. The Debtor was engaged in business when it made the Transfers.

32. The Debtor was left with unreasonably small capital after it made the Transfers.

33. The Debtor did not receive fair consideration from the Defendant in return for the Transfers.

34. Pursuant to 11 U.S.C. § 544(b)(1), the Trustee is entitled to judgment avoiding the Transfers for the benefit of the creditors of the Debtor's estate.

35. Pursuant to 11 U.S.C. § 550(a), the Trustee is entitled to judgment directing payment from Defendant in the amount of the Transfers.

WHEREFORE, the Trustee requests the entry of judgment as follows:

- (a) On the first, second and third causes of action, avoiding the Transfers, and directing payment to the Trustee in the amount of the Transfers;
- (b) Costs and attorney fees; and
- (c) Such other and further relief as is necessary and proper.

Dated: New York, New York
February 7, 2022

RICH MICHAELSON MAGALIFF, LLP
Attorneys for the Trustee
By:

/s/ Howard P. Magaliff
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EXHIBIT 1

TNT Transport and Logistics Inc.**Payments to****Roshan Kuriakose****Transaction**

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
6/11/2018	SQC*ROSHAN	1,000.00
6/11/2018	SQC*ROSHAN	850.00
6/25/2018	SQC*ROSHAN	2,040.00
6/25/2018	SQC*ROSHAN	1,640.00
7/5/2018	SQC*ROSHAN	450.00
7/6/2018	SQC*ROSHAN	400.00
7/19/2018	SQC*ROSHAN	1,200.00
7/19/2018	SQC*ROSHAN	975.00
7/23/2018	SQC*ROSHAN	500.00
7/30/2018	SQC*ROSHAN	1,000.00
7/30/2018	SQC*ROSHAN	1,000.00
8/9/2018	SQC*ROSHAN	1,500.00
8/10/2018	SQC*ROSHAN	1,500.00
8/13/2018	SQC*ROSHAN	500.00
8/13/2018	SQC*ROSHAN	500.00
8/17/2018	SQC*ROSHAN	1,250.00
8/17/2018	SQC*ROSHAN	540.00
8/20/2018	SQC*ROSHAN	1,000.00
8/20/2018	SQC*ROSHAN	1,500.00
8/24/2018	SQC*ROSHAN	1,000.00
8/24/2018	SQC*ROSHAN	600.00
8/27/2018	SQC*ROSHAN	500.00
8/27/2018	SQC*ROSHAN	1,000.00
8/27/2018	SQC*ROSHAN	1,200.00
8/27/2018	SQC*ROSHAN	1,000.00
8/27/2018	SQC*ROSHAN	500.00
8/30/2018	SQC*ROSHAN	1,000.00
8/30/2018	SQC*ROSHAN	700.00
9/6/2018	SQC*ROSHAN	900.00
9/10/2018	SQC*ROSHAN	1,500.00
9/10/2018	SQC*ROSHAN	1,000.00
9/10/2018	SQC*ROSHAN	500.00
9/14/2018	SQC*ROSHAN	1,150.00
9/17/2018	SQC*ROSHAN	970.00
9/19/2018	SQC*ROSHAN	1,000.00
9/20/2018	SQC*ROSHAN	1,000.00
9/24/2018	SQC*ROSHAN	850.00
9/24/2018	SQC*ROSHAN	620.00
9/24/2018	SQC*ROSHAN	1,000.00
9/25/2018	SQC*ROSHAN	1,300.00
9/26/2018	SQC*ROSHAN	800.00
9/26/2018	SQC*ROSHAN	1,000.00
9/28/2018	SQC*ROSHAN	880.00
10/1/2018	SQC*ROSHAN	400.00

TNT Transport and Logistics Inc.**Payments to
Roshan Kuriakose****Transaction**

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
10/1/2018	SQC*ROSHAN	500.00
10/1/2018	SQC*ROSHAN	1,000.00
10/1/2018	SQC*ROSHAN	500.00
10/9/2018	SQC*ROSHAN	1,000.00
10/9/2018	SQC*ROSHAN	800.00
10/10/2018	SQC*ROSHAN	1,500.00
10/22/2018	SQC*ROSHAN	500.00
10/22/2018	SQC*ROSHAN	2,000.00
10/29/2018	SQC*ROSHAN	1,500.00
10/29/2018	SQC*ROSHAN	525.00
10/29/2018	SQC*ROSHAN	700.00
11/2/2018	SQC*ROSHAN	500.00
11/5/2018	SQC*ROSHAN	500.00
11/5/2018	SQC*ROSHAN	1,000.00
11/13/2018	SQC*ROSHAN	1,050.00
11/13/2018	SQC*ROSHAN	1,100.00
11/13/2018	SQC*ROSHAN	1,550.00
11/14/2018	SQC*ROSHAN	2,500.00
11/26/2018	SQC*ROSHAN	600.00
12/3/2018	SQC*ROSHAN	840.00
12/3/2018	SQC*ROSHAN	430.00
12/3/2018	SQC*ROSHAN	480.00
12/10/2018	SQC*ROSHAN	1,500.00
12/11/2018	SQC*ROSHAN	600.00
12/13/2018	SQC*ROSHAN	600.00
12/17/2018	SQC*ROSHAN	500.00
12/17/2018	SQC*ROSHAN	1,000.00
12/17/2018	SQC*ROSHAN	435.00
12/27/2018	SQC*ROSHAN	690.00
12/28/2018	SQC*ROSHAN	600.00
12/31/2018	SQC*ROSHAN	700.00
1/2/2019	SQC*ROSHAN	1,350.00
1/3/2019	SQC*ROSHAN	1,500.00
1/4/2019	SQC*ROSHAN	1,000.00
1/14/2019	SQC*ROSHAN	600.00
1/14/2019	SQC*ROSHAN	2,600.00
1/14/2019	SQC*ROSHAN	2,000.00
1/18/2019	SQC*ROSHAN	500.00
1/22/2019	SQC*ROSHAN	1,000.00
1/22/2019	SQC*ROSHAN	500.00
1/22/2019	SQC*ROSHAN	500.00
1/22/2019	SQC*ROSHAN	1,000.00
1/24/2019	SQC*ROSHAN	500.00
1/28/2019	SQC*ROSHAN	500.00

TNT Transport and Logistics Inc.

Payments to

Roshan Kuriakose

Transaction

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
2/19/2019	SQC*ROSHAN	1,000.00
2/19/2019	SQC*ROSHAN	1,000.00
2/19/2019	SQC*ROSHAN	1,000.00
2/19/2019	SQC*ROSHAN	2,175.00
2/19/2019	SQC*ROSHAN	1,000.00
2/19/2019	SQC*ROSHAN	700.00
2/25/2019	SQC*ROSHAN	500.00
2/25/2019	SQC*ROSHAN	500.00
2/26/2019	SQC*ROSHAN	400.00
3/4/2019	SQC*ROSHAN	1,000.00
3/4/2019	SQC*ROSHAN	1,000.00
3/4/2019	SQC*ROSHAN	2,000.00
3/4/2019	SQC*ROSHAN	1,500.00
3/4/2019	SQC*ROSHAN	500.00
3/4/2019	SQC*ROSHAN	500.00
3/4/2019	SQC*ROSHAN	500.00
3/11/2019	SQC*ROSHAN	1,000.00
3/11/2019	SQC*ROSHAN	500.00
3/19/2019	SQC*ROSHAN	700.00
3/20/2019	SQC*ROSHAN	600.00
3/21/2019	SQC*ROSHAN	700.00
3/22/2019	SQC*ROSHAN	1,500.00
3/22/2019	SQC*ROSHAN	600.00
3/25/2019	SQC*ROSHAN	1,500.00
3/26/2019	SQC*ROSHAN	1,000.00
4/1/2019	SQC*ROSHAN	1,000.00
4/1/2019	SQC*ROSHAN	750.00
4/2/2019	SQC*ROSHAN	780.00
12/2/2019	Zelle Transfer Conf# 609f8908c; kuriakose, roshan	1,000.00
12/2/2019	Zelle Transfer Conf# 2cdd13d1e; kuriakose, roshan	1,000.00
12/2/2019	Zelle Transfer Conf# e8eb608cc; kuriakose, roshan	1,000.00
12/23/2019	Zelle Transfer Conf# ee6b3fde5; kuriakose, roshan	2,000.00
Total Payments to Roshan Kuriakose		<u>113,870.00</u> *

*Analysis is based on transactions of \$400 and greater.

More information is needed.

EXHIBIT 2

Schedule K		Shareholders' Pro Rata Share Items (continued)	Total amount	
Other Information	17 a	Investment income	17a	
	b	Investment expenses	17b	
	c	Dividend distributions paid from accumulated earnings and profits	17c	
	d	Other items and amounts (attach statement)		
Reconciliation	18	Income/loss reconciliation. Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	18	2,632

Schedule L		Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)		
1	Cash		10,943		11,834		
2a	Trade notes and accounts receivable						
b	Less allowance for bad debts	()		()			
3	Inventories						
4	U.S. government obligations						
5	Tax-exempt securities (see instructions) ..						
6	Other current assets (attach statement) ..						
7	Loans to shareholders						
8	Mortgage and real estate loans						
9	Other investments (attach statement)						
10a	Buildings and other depreciable assets ..						
b	Less accumulated depreciation	()		()			
11a	Depletable assets						
b	Less accumulated depletion	()		()			
12	Land (net of any amortization)						
13a	Intangible assets (amortizable only)						
b	Less accumulated amortization	()		()			
14	Other assets (attach statement)						
15	Total assets		10,943		11,834		
Liabilities and Shareholders' Equity							
16	Accounts payable						
17	Mortgages, notes, bonds payable in less than 1 year						
18	Other current liabilities (attach statement) .						
19	Loans from shareholders						
20	Mortgages, notes, bonds payable in 1 year or more						
21	Other liabilities (attach statement)						
22	Capital stock		25,000		25,000		
23	Additional paid-in capital						
24	Retained earnings		(14,057)		(13,166)		
25	Adjustments to shareholders' equity (attach statement)						
26	Less cost of treasury stock	()		()			
27	Total liabilities and shareholders' equity ..		10,943		11,834		

Schedule K		Shareholders' Pro Rata Share Items (continued)	Total amount
Alternative Minimum Tax (AMT) items	15a	Post-1986 depreciation adjustment	15a
	b	Adjusted gain or loss	15b
	c	Depletion (other than oil and gas)	15c
	d	Oil, gas, and geothermal properties - gross income	15d
	e	Oil, gas, and geothermal properties - deductions	15e
	f	Other AMT items (attach statement)	15f
Items Affecting Shareholder Basis	16a	Tax-exempt interest income	16a
	b	Other tax-exempt income	16b
	c	Nondeductible expenses	16c
	d	Distributions (attach statement if required) (see instructions)	16d
	e	Repayment of loans from shareholders	16e
Other Information	17 a	Investment income	17a
	b	Investment expenses	17b
	c	Dividend distributions paid from accumulated earnings and profits	17c
	d	Other items and amounts (attach statement)	
Reconciliation	18	Income/loss reconciliation. Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14p	18 (21,736)

Schedule L		Balance Sheets per Books		Beginning of tax year	End of tax year
Assets		(a)	(b)	(c)	(d)
1	Cash		11,834		14,532
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts	()	()		
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach statement)				
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (attach statement)				
10a	Buildings and other depreciable assets				
b	Less accumulated depreciation	()	()		
11a	Depletable assets				
b	Less accumulated depletion	()	()		
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()	()		
14	Other assets (attach statement)				
15	Total assets		11,834		14,532
Liabilities and Shareholders' Equity					
16	Accounts payable				
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities (attach statement)				
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach statement)				
22	Capital stock		25,000		49,434
23	Additional paid-in capital				
24	Retained earnings		(13,166)		(34,902)
25	Adjustments to shareholders' equity (attach statement)				
26	Less cost of treasury stock	()	()		
27	Total liabilities and shareholders' equity		11,834		14,532

Schedule K Shareholders' Pro Rata Share Items (continued)

		Total amount
Alternative Tax (AMT) Items	15a Post-1986 depreciation adjustment	15a
	b Adjusted gain or loss	15b
	c Depletion (other than oil and gas)	15c
	d Oil, gas, and geothermal properties - gross income	15d
	e Oil, gas, and geothermal properties - deductions	15e
	f Other AMT items (attach statement)	15f
Items Affecting Shareholder Basis	16a Tax-exempt interest income	16a
	b Other tax-exempt income	16b
	c Nondeductible expenses	16c
	d Distributions (attach statement if required) (see instructions)	16d
	e Repayment of loans from shareholders	16e
Other Information	17 a Investment income	17a
	b Investment expenses	17b
	c Dividend distributions paid from accumulated earnings and profits	17c
	d Other items and amounts (attach statement)	
Reconciliation	18 Income (loss) reconciliation. Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14p	18 (20,856)

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		14,532		2,985
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts	()		()	
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach statement)				
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (attach statement)				
10a	Buildings and other depreciable assets				
b	Less accumulated depreciation	()		()	
11a	Depletable assets				
b	Less accumulated depletion	()		()	
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()		()	
14	Other assets (attach statement)				
15	Total assets		14,532		2,985
Liabilities and Shareholders' Equity					
16	Accounts payable				
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities (attach statement)				
19	Loans from shareholders		0		9,309
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach statement)				
22	Capital stock		49,434		49,434
23	Additional paid-in capital				
24	Retained earnings		(34,902)		(55,758)
25	Adjustments to shareholders' equity (attach statement)				
26	Less cost of treasury stock	()		()	
27	Total liabilities and shareholders' equity		14,532		2,985